

REMARKS

The following remarks are being submitted as a full and complete response to the Office Action dated January 28, 2009. In view of the following remarks, the Examiner is respectfully requested to give due reconsideration to this application, to indicate the allowability of the claims, and to pass this case to issue.

Status of the Claims

Claims 4, 7-10 and 12 are under consideration in this application. Claims 5 and 14 are being cancelled without prejudice or disclaimer. Claim 4 is being amended to correct formal errors and to more particularly point out and distinctly claim the subject invention. Applicants hereby submit that no new matter is being introduced into the application through the submission of this response.

Prior Art Rejection

Claims 4-5, 7-8, 9-10, 12 and 14 were rejected under 35 U.S.C. §103(a) as being unpatentable over Ohba et al. (US 6,605,344) in view of the newly-cited Ohba et al. (US 5,439,745). This rejection has been carefully considered, but is most respectfully traversed, as more fully discussed below.

The present invention provides a method for producing a stretched laminate film with oxygen-gas barrier properties. The stretched laminate film includes a layer (a) formed from a composition of a polycarboxylate-based polymer (A) and a plasticizer (B), a layer (c) containing a multivalent metal compound (C) and a layer (b) formed from a thermoplastic resin. The stretched laminate film includes at least one layer structural unit where the layer (a) and the layer (c) are adjacent to each other. The method of producing the stretched laminate film of claim 4, comprises the steps of: superposing at least one of the layer (a) and the layer (c) on at least one surface of the layer (b) by a coating process (claim 5; p. 7, lines 22-25); and stretching a laminate film including the layer (a), the layer (b) and the layer (c) in an integrated manner (claim 14; p. 11, lines 10-17) and with a surface stretch ratio of 1.1 to 100.

As admitted by the Examiner (p. 3, 2nd para. of the outstanding Office Action), Ohba '344 only stretches a "polymer layer" or a "nylon film," but not any "metallic-compound-containing layer" as in the present invention. Ohba '745 was relied upon by the Examiner to provide the missing teachings. The multi-layer film in Ohba '745 has a stretched melt-molded

PVA layer containing a PVA-metal compound obtained by mixing a metal compound with PVA. However, this multi-layer film is produced by laminating the stretched melt-molded PVA layer to another resin layer, or by co-extruding the PVA-metal compound and another resin (col. 8, lines 19-65). Ohba '745 does not superpose a melt-molded PVA layer on another resin layer by a coating process to obtain a laminate film, and then stretch the laminate film in an integrated manner.

The feature of coating-stretching in an integrated manner provides "unexpected results" (p. 38, line 17 to p. 40, line 5) including an oxygen permeability of only $2.0 \text{ cm}^3(\text{STP})/(\text{m}^2 \cdot \text{day} \cdot \text{MPa})$, as evidenced by the Example 2 in Table 1-1 (p. 77). On the other hand, Ohba '745's production process provides a stretched laminate film with an oxygen permeability of $20 \text{ cm}^3(\text{STP}) / (\text{m}^2 \cdot \text{day} \cdot \text{MPa})$, as evidenced by the Reference Example 8 in Table 1-2 (p. 79).

As is apparent from the oxygen permeability measuring results, the present invention provides a stretched laminate film having excellent oxygen-gas barrier properties, and carries out stable operations from the viewpoint of performance and production costs. The presence of these unexpected properties is evidence of nonobviousness. MPEP§716.02(a).

"Presence of a property not possessed by the prior art is evidence of nonobviousness. In re Papesch, 315 F.2d 381, 137 USPQ 43 (CCPA 1963) (rejection of claims to compound structurally similar to the prior art compound was reversed because claimed compound unexpectedly possessed anti-inflammatory properties not possessed by the prior art compound); Ex parte Thumm, 132 USPQ 66 (Bd. App. 1961) (Appellant showed that the claimed range of ethylene diamine was effective for the purpose of producing " 'regenerated cellulose consisting substantially entirely of skin' " whereas the prior art warned "this compound has 'practically no effect.' ").

Although "[t]he submission of evidence that a new product possesses unexpected properties does not necessarily require a conclusion that the claimed invention is nonobvious. In re Payne, 606 F.2d 303, 203 USPQ 245 (CCPA 1979). See the discussion of latent properties and additional advantages in MPEP § 2145", the unexpected properties were unknown and non-inherent functions in view of Ohba '745, since Ohba '745 does not inherently achieve the same results. In other words, these advantages would not flow naturally from following the teachings of Ohba '745, since Ohba '745 fails to suggest the feature of coating-stretching in an integrated manner.

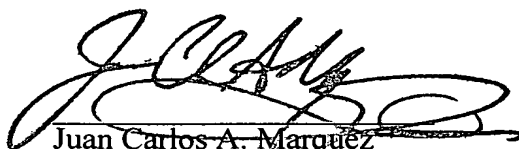
Applicants contend that Ohba '344 and Ohba '745 fail to teach or suggest each and every feature of the present invention as recited in at least independent claim 4. As such, the present invention as now claimed is distinguishable and thereby allowable over the rejections raised in the Office Action. The withdrawal of the outstanding prior art rejections is in order, and is respectfully solicited.

Conclusion

In view of all the above, Applicants respectfully submit that certain clear and distinct differences as discussed exist between the present invention as now claimed and the prior art references upon which the rejections in the Office Action rely. These differences are more than sufficient that the present invention as now claimed would not have been anticipated nor rendered obvious given the prior art. Rather, the present invention as a whole is distinguishable, and thereby allowable over the prior art.

Favorable reconsideration of this application as amended is respectfully solicited. Should there be any outstanding issues requiring discussion that would further the prosecution and allowance of the above-captioned application, the Examiner is invited to contact the Applicants' undersigned representative at the address and telephone number indicated below.

Respectfully submitted,



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